

APPEAL NO. 022130  
FILED SEPTEMBER 24, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 29, 2002. The hearing officer determined that the appellant's (claimant) correct impairment rating (IR) is 0%, as determined by the Texas Workers' Compensation Commission (Commission)-selected designated doctor. The claimant appeals, asserting that the designated doctor's IR is overcome by the great weight of the contrary medical evidence. The respondent (carrier) replies, urging affirmance.

DECISION

Affirmed.

Three different doctors have evaluated the claimant in accordance with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and assigned IRs to the claimant. The claimant was assigned an IR of 28% by Dr. O consisting of a 5% rating for hernia, 20% for sexual dysfunction, and 5% for depression. He was assigned a 28% IR by Dr. S consisting of a 5% rating for the ilioinguinal nerve, 10% for sexual dysfunction, and 15% for depression. The designated doctor, Dr. R, certified that the claimant reached maximum medical improvement on March 4, 2001, and assigned ratings of 0% for the successfully repaired hernia; 0% for sexual dysfunction, noting that the claimant had a new functional penile implant, to replace the one removed after the initial failed hernia surgery; and 0% for depression, as his depression was a result of complications of his workplace accident, the complications had resolved, and the "reactive depression cannot be regarded as a permanent condition." In summary, the designated doctor concluded that, despite the claimant's long and difficult course of treatment subsequent to the compensable injury, the claimant has not sustained permanent impairment or loss of function, as is required by the 1989 Act before impairment income benefits may be awarded.

The designated doctor's IR report has presumptive weight and the Commission must base its determination of IR on the designated doctor's report unless the great weight of the other medical evidence is to the contrary. Section 408.125(e). The hearing officer did not err in giving the designated doctor's certification of IR presumptive weight. The designated doctor's individual ratings are based on his assessment of the claimant's permanent impairment and comport with the AMA Guides and the 1989 Act. The disputed issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issue, and the hearing officer concluded that the ratings of the other doctors reflected a simple difference of medical opinion, and, as

such, did not constitute the great weight of the contrary medical evidence necessary to overcome the opinion of the designated doctor. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determination is so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GARY SUDOL  
9330 LBJ FREEWAY, SUITE 1200  
DALLAS, TEXAS 75243.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge